

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILLIAM HENDREN,

Plaintiff,

v.

CV 09-1078 JB/WPL

BERNALILLO COUNTY METROPOLITAN
DETENTION CENTER, ET AL.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter comes before me *sua sponte* following Plaintiff William Hendren's failure to respond to my Order to Show Cause, (Doc. 33). Hendren has filed no proof that one defendant, the City of Albuquerque, has been served. For the reasons described below, I recommend that the City of Albuquerque be dismissed as a defendant in this lawsuit without prejudice.

This case was filed on November 10, 2009, against Defendants Bernalillo County Metropolitan Detention Center, Bernalillo County, the City of Albuquerque, Ronald Torres and Correctional Medical Services. In January of 2010, a summons was issued as to all defendants. Subsequently, all defendants aside from the City of Albuquerque filed answers to Hendren's complaint. (Doc. 5; Doc. 9.) Hendren is currently proceeding *pro se*, after the Court granted his attorney leave to withdraw in October of 2010. (Doc. 26.)

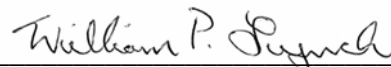
On November 22, 2010, I entered an Order to Show Cause requiring that Hendren either effect service on the City of Albuquerque or provide me with a written explanation of why service has not been effected. (Doc. 33.) Hendren was advised that failure to comply with the terms of that

order would result in the dismissal of the City of Albuquerque without prejudice. (*Id.*) To this date, Hendren has failed to file any response.

The Federal Rules of Civil Procedure require that a defendant be served within 120 of the filing of the complaint. FED. R. CIV. P. 4(m). If a defendant is not served or does not waive service within that time, the court must either “dismiss the action without prejudice against that defendant” or “order that service be made within a specified time.” *Id.* If the plaintiff shows good cause why service was not made, the court is required to extend the time for service. *Id.* Additionally, the Federal Rules of Civil Procedure provide for involuntary dismissal of an action where the plaintiff fails “to comply with these rules or a court order” FED. R. CIV. P. 41(b).

I find that Hendren has not provided proof of service on the City of Albuquerque within the time period required by the Federal Rules of Civil Procedure. I further find that he has not responded to my Order to Show Cause; accordingly, he has failed to show either that the City of Albuquerque waived service or good cause why service was not made. As a result, I recommend that the City of Albuquerque be dismissed from this action without prejudice.

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.**



William P. Lynch
United States Magistrate Judge